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No. 83-1851

IN THE SUPREME COURT OF THE UNITED

October Term, 1983

F/V BARANOF, its gear, paraphernalia,
etc.;

BARANOF FISHERIES, A Washington Limited
Partnership;

RAINER NATIONAL BANK; and

RAINER NATIONAL BANK, as Trustee for
Universal Seafoods, Ltd.,

Petitioners,

vs.

STATE OF ALASKA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF ALASKA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Does the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882, extinguish state court jurisdiction to enforce state fishery regulations against state registered vessels beyond the three-mile territorial sea?
2. Is a vessel that registers and is licensed under state fishery laws "registered under the laws of [the] state" within the meaning of 16 U.S.C. 1856(a)?
3. Do in rem vessel forfeiture actions brought to enforce state fishery laws lie exclusively within federal admiralty jurisdiction?
4. Do provisions of the Ship Mortgage Act of 1920, at 46 U.S.C. 951, divest state courts of in rem forfeiture jurisdiction over vessels subject to preferred ship mortgages?

TABLE OF CONTENTS

	<u>Page</u>
Opinion Below	1
Jurisdiction	1
Constitutional Provisions, Statutes, and Regulations Involved.	1
Statement of the Case	2
Reasons Why the Writ Should Be Denied	8
Summary of Argument	8
1. Review Of The Alaska Court's Interlocutory Order Is Not Within This Court's Narrow "Collateral Order" Except- tion To The Finality Requirement.	9
2. The F/V Baranof's MFCMA Preemption Claim May Soon Be Mooted By Adoption Of A Federal King Crab Management Plan.	12
3. The F/V Baranof Does Not Present Major Federal Questions Meriting This Court's Review	13

	<u>Page</u>
A. The MFCMA Recognizes And Provides For Continued State Fishery Management In The FCZ.	13
B. Exercise of State Jurisdiction Over Vessels Registered Under State Fishery Laws Is In Full Harmony With The MFCMA's Objectives and With This Court's Prior Decisions.	15
C. The MFCMA Does Not Divest State Courts Of Jurisdiction Over Violations of State Fishery Laws Committeed By State Registered Vessels In The FCZ.	19
D. States Have In Rem Forfeiture Jurisdiction Over Fishery Violations, And The Ship Mortgage Act Does Not Limit That Jurisdiction	22
4. There Is No Conflict In The Lower Court Decisions Necessitating This Court's Review.	25
CONCLUSION	29

Appendices

	<u>Page</u>
Appendix A: In Rem Forfeiture Complaint, Alaska Superior Court	A-1
Appendix B: North Pacific Fishery Management Council Memorandum Regarding King Crab Fishery Management Plan	B-1
Appendix C: Federal Statutes	C-1
Appendix D: State Statutes, Regulations, and Constitutional Provisions Relied Upon	D-1

TABLE OF AUTHORITIES

CASES

	<u>Page</u>
Anderson Seafoods, Inc. v. Graham, 529 F.Supp. 512 (D. Fla. 1982)	26,27
C. J. Hendry Co. v. Moore, 318 U.S. 133 (1942)	22,23,24
Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949)	8,9,10
Flynt v. Ohio, 451 U.S. 619 (1981)	12
Franchise Tax Board v. Laborers Vacation Trust, 103 S.Ct. 2841 (1983)	20,21
F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130 (1981)	9,18
Gully v. First National Bank, 299 U.S. 109 (1936)	20
James Stewart & Co. v. Rivara, 274 U.S. 614 (1927)	23

	<u>Page</u>
Livings v. Davis, 422 So.2d 364 (Fla. Ct. App. 1982)	27,28
Local No. 438 Construction & General Laborers' Union v. Curry, 371 U.S. 542 (1963) . .	11
Madruga v. Superior Court, 346 U.S. 556 (1954)	24
Mercantile National Bank v. Langdeau, 371 U.S. 555 (1963)	11,12
People v. Weeren, 607 P.2d 1279 (Cal. 1980), cert. denied, 449 U.S. 839 (1980)	9,15,17,26
Skiriotes v. Florida, 313 U.S. 69 (1941)	9,13,15,17,23
Smith v. Maryland, 59 U.S. (18 How.) 71 (1855)	24
State v. Bundrant, 546 P.2d 530 (Alaska 1976), appeal dismissed sub nom., Uri v. Alaska, 429 U.S. 806 (1976) . .	9,18

	<u>Page</u>
State v. Millington, 377 So. 2d 685 (Fla. 1979)	26
State v. Baranof, 677 P.2d 1245 (Alaska 1984)	7
State v. Rice, 626 P.2d 104 (Alaska 1981)	24
State v. Southeastern Fisheries Association, 415 So.2d 1326 (Fla. Ct. App. 1982)	26,27
State v. Sterling, 448 A.2d 785 (R.I. 1982)	26
Tingley v. Allen, 397 So.2d 1166 (Fla. Ct. App. 1981)	27
<u>CONSTITUTIONAL PROVISIONS</u>	
Alaska Const. art. VIII, § 2 . .	20
Alaska Const. art. VIII, § 4 . .	20
<u>STATUTES AND ACTS</u>	
16 U.S.C. 1801(b)	14
16 U.S.C. 1856(a)	6,14,15

	<u>Page</u>
16 U.S.C. 1861(d)	19, 20
16 U.S.C. 1861(e)	19
28 U.S.C. 1257(3)	1
28 U.S.C. 1333(1)	5, 22
46 U.S.C. 951	23
46 U.S.C. 954(a)	25
AS 16.05.221(a)	20
AS 16.05.251	20
AS 16.05.475	16
AS 16.05.490(a)	16
AS 16.05.520	16
 Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 - 1882	 4, 5
 Ship Mortgage Act of 1920, 46 U.S.C. 911 - 984 . . .	 5, 6, 7, 23, 25

REGULATIONS

	<u>Page</u>
5 AAC 34.020	16
5 AAC 34.030	16
5 AAC 39.120(a)	16
5 AAC 39.120(b)	16

OTHER AUTHORITIES

Committee on Commerce and
National Ocean Policy Study,
94th Cong., 2d Sess., A
Legislative History of the
Fishery Conservation and
Management Act of 1976 . . . 13,14,15

G. Gilmore and C. Black,
The Law of Admiralty,
(2nd ed. 1975) 23

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OPINION BELOW

The February 10, 1984, opinion of the Supreme Court of the State of Alaska is reported at 677 P.2d 1245. 1/

JURISDICTION

Petitioners invoke this Court's jurisdiction under 28 U.S.C. 1257(3). As articulated in the argument infra, the State of Alaska denies that this case presents a final decision reviewable by this Court.

CONSTITUTIONAL PROVISIONS, STATUTES,
AND REGULATIONS INVOLVED

Constitutional Provisions (App. D, *infra*):

Alaska Const. art. VIII, § 2, 4

United States Statutes (App. C, *infra*):

Magnuson Fishery Conservation and

1/ The opinion as published in the Pacific Reporter corrects the citations of 16 U.S.C. 1812 and 16 U.S.C. 1856(a), erroneously cited as 46 U.S.C. 1812 and 46 U.S.C. 1856(a) in the slip opinion (Appendix A of Petition, at 28).

Management Act, 16 U.S.C. 1801(b),
1856(a), 1861(d), 1861(e)
28 U.S.C. 1257(3)
28 U.S.C. 1333(1)
Ship Mortgage Act of 1920, 46 U.S.C.
951, 954(a)

Alaska Statutes and Regulations
(App. D, *infra*):

AS 16.05.221(a)
AS 16.05.251
AS 16.05.475
AS 16.05.490(a)
AS 16.05.520

5 AAC 34.020
5 AAC 34.030
5 AAC 39.120(a)
5 AAC 39.120(b)

STATEMENT OF THE CASE

Alaska has exercised management authority over king crab beyond its three mile territorial sea since the Bering Sea king crab fishery developed in the 1960's. There are presently no federal

regulations governing management of the domestic king crab fishery. 2/

On May 9, 1981, under terms of a valid search warrant, State of Alaska fish and wildlife protection officers seized the F/V Baranof in Dutch Harbor, Alaska, and the State then promptly filed an in rem forfeiture complaint, alleging that the vessel harvested 298,651 pounds of king crab in closed waters in 1979 and 1980, and violated numerous state king crab transportation and reporting provisions. 3/

The F/V Baranof is a 797 ton steel hulled fishing vessel and processor which is home ported in Washington state, but which fishes for king crab off the coast of Alaska. At the time of the

2/ The federal government does restrict king the crab fishing activities of foreign vessels.

3/ The Alaska supreme court opinion characterizes the charges as "exceed[ing] its authorized catch limit." 677 P.2d 1247. As evidenced in the complaint, Appendix A, infra, the charges did not specifically include a "catch limit" violation.

violations, the vessel bore Alaska Department of Fish and Game vessel license and plate no. 34855.

The State alleges that the fishing vessel's illegal activities occurred in Bristol Bay (State fisheries statistical area T) off the coast of Alaska, beyond the State's three-mile territorial sea, within the three-to-two-hundred mile fishery conservation zone ("FCZ").

Pursuant to a stipulation, the State released the vessel to its owners on May 27, 1981, pending the outcome of the case. On June 3, 1981, the F/V Baranof's owners and lienholders, who are Washington state residents (hereinafter collectively referred to as "Petitioners" or "the F/V Baranof"), petitioned to remove the case to the United States District Court for the District of Alaska. The F/V Baranof asserted, as bases for federal jurisdiction: diversity of citizenship, violation of due process under the Fourteenth Amendment to the United States Constitution, exclusive federal jurisdiction under the Magnuson Fishery

Conservation and Management Act, 16 U.S.C. 1801-1882 ("MFCMA"), exclusive admiralty jurisdiction over in rem forfeitures, and exclusive federal jurisdiction over preferred ship mortgages under the Ship Mortgage Act of 1920, 46 U.S.C. 911-984.

The district court rejected each claim of jurisdiction. It held that the case was within the saving to suitors clause of 28 U.S.C. 1333(1) and hence cognizable in state court, that there was no diversity of citizenship, and that the assertions of jurisdiction based on the MFCMA, the Ship Mortgage Act, and the Fourteenth Amendment were insufficient because they were interposed only as defenses to the State's claims. The district court "remanded" the case to the Alaska superior court. Thereafter, the F/V Baranof filed a pre-answer motion to dismiss in the state trial court, alleging as defenses essentially the same issues presented in the instant petition for certiorari.

The trial court granted the motion to dismiss on the basis that the

MFCMA preempted state fisheries enforcement in the FCZ and provided for an exclusive federal forum. However, the court rejected all the F/V Baranof's other arguments, holding that the Ship Mortgage Act of 1920 does not provide exclusive federal court jurisdiction, that in rem actions do not lie exclusively in federal admiralty jurisdiction, and that the vessel's due process claim was moot.

The State appealed and the F/V Baranof cross-appealed to the Alaska supreme court. Both the United States, on behalf of the Secretary of Commerce, and the State of California, participated as amici curiae in the appeal and cross-appeal. Both amici fully supported the State's position that Alaska has management and enforcement authority over its king crab fishery in the FCZ. The Secretary of Commerce summarized the United States position as follows:

Section 306(a) [16 U.S.C. 1856(a)] expresses the intent of Congress to permit continued state

jurisdiction and authority over fishing ... by state-registered vessels outside state waters.

Brief of Secretary of Commerce as Amicus Curiae, at 10-11, in State v. F/V Baranof, 677 P.2d 1245 (Alaska 1984).

The Alaska supreme court unanimously reversed the trial court's order of dismissal. It held that the MFCMA does not provide exclusive federal jurisdiction over fisheries violations in the FCZ and that it does not preempt state fisheries management in the FCZ absent conflicting federal rules. It affirmed the superior court's rulings that the Ship Mortgage Act of 1920 does not provide exclusive federal jurisdiction, that an *in rem* forfeiture action is not exclusively within federal admiralty jurisdiction, and that the vessel's seizure was not a violation of due process. The supreme court remanded the case to the trial court for a trial on the merits. The F/V Baranof has petitioned for a writ of certiorari to review this decision.

REASONS WHY THE WRIT SHOULD BE DENIED

Summary of Argument

The interlocutory decision Petitioners present is not within the narrow "collateral order" exception to the finality requirement of 28 U.S.C. 1257. The decision to remand the case to the trial court for trial has no "final and irreparable effect" on the parties, Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 545 (1949), and it is clearly correct on the merits.

Furthermore, the issues raised by petitioners are not substantial federal questions requiring review. The Alaska supreme court carefully reviewed the Petitioners' claims and correctly decided that the State has jurisdiction to prosecute this in rem action for violations of State king crab conservation regulations in the FCZ.

The Alaska supreme court's decision is in harmony with this Court's decisions, and follows a long line of cases that affirm the states' authority to regulate their valuable fishery resources both within and outside the

traditional three mile state territorial sea. Skiriotes v. Florida, 313 U.S. 69 (1941); F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130 (1981); State v. Bundrant, 546 P.2d 530 (Alaska 1976), appeal dismissed sub nom., Uri v. Alaska, 429 U.S. 806 (1976); People v. Weeren, 607 P.2d 1279 (Cal. 1980), cert. denied, 449 U.S. 839 (1980).

1. Review of the Alaska Court's Interlocutory Order Is Not Within This Court's Narrow "Collateral Order" Exception To The Finality Requirement.

Petitioners ask this Court to review an interlocutory ruling of the Alaska supreme court, which reversed the trial court's finding of exclusive federal jurisdiction under the MFCMA, and remanded the case for trial. The F/V Baranof relies on that narrow exception to the finality requirement of 28 U.S.C. 1257, which has allowed review of certain important, independent "collateral issues." Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).

However, as articulated further *infra*, Petitioners raise issues that are neither of sufficient importance to merit interlocutory review nor of such an independent nature as to require deferral of review until after final judgment.

As the Cohen Court held, the class of cases that merit interlocutory review is small. Only where the decision has a "final and irreparable effect on the rights of the parties" will review be granted. Cohen, 337 U.S. at 545. 4/ The instant case does not fall within this narrow "collateral order" exception to the finality rule, since Petitioners are not foreclosed from asserting error after trial on the merits. Furthermore, the claims raised by Petitioners are not

4/ In Cohen, the judgment this Court reviewed effectively precluded a minority shareholder from pursuing an action to challenge alleged mismanagement of over \$100 million in corporate stocks, by requiring pretrial posting of security for attorney fees. No similar preclusion of remedy exists in the instant case.

of such substantive merit or national significance as to require interlocutory review.

Given the insubstantial claims of error raised by Petitioners (discussed infra), and the relatively small inconvenience to Petitioners of proceeding to trial, 5/ there simply is no "irreparable effect" on Petitioners' rights so as to bring this case within the "collateral order" exception to the final judgment requirement of 28 U.S.C. 1257. Granting this petition could result in this Court

5/ This case does not present the spectre of long and complex litigation that might otherwise be avoided, regarding liquidation of national banks, and involving over 143 parties, presented in Mercantile Nat'l Bank v. Langdeau, 371 U.S. 555 (1963), cited by the F/V Baranof. This is a straightforward in rem forfeiture case involving crabbing violations by one vessel. Nor does this case involve a major national issue such as the right of labor unions to picket, presented in Local No. 438 Constr. & Gen. Laborers' Union v. Curry, 371 U.S. 542 (1963), also cited by Petitioners.

passing on issues that might be "dissipated by the final outcome of the case." Mercantile National Bank v. Langdeau, 371 U.S. 555, 572 (1963) (Harlan, J., diss.). See also Flynt v. Ohio, 451 U.S. 619 (1981).

2. The F/V Baranof's MFCMA Preemption Claim May Soon Be Mooted By Adoption Of A Federal King Crab Management Plan.

Not only do Petitioners seek review of a nonfinal judgment, but, as evidenced by Appendix B infra, it is likely that the issue raised by Petitioners regarding preemption by the MFCMA may soon be factually altered and mooted, because the federal government expects to adopt a king crab fishery management plan within the near future. Accordingly, it would be inappropriate to grant certiorari.

3. The F/V Baranof Does Not Present Major Federal Questions Meriting This Court's Review.

A. The MFCMA Recognizes And Provides For Continued State Fishery Management In The FCZ.

At the time Congress enacted the MFCMA in 1976, the law was well settled that states had jurisdiction over fishery violations beyond state territorial seas, where the state had a legitimate interest in, and sufficient nexus with, the fishing activity. Skirriotes v. Florida, 313 U.S. 69 (1941). Both the express language of the MFCMA and its legislative history confirm that Congress was fully aware of the importance of state fisheries management in and beyond state territorial seas, and of the need to continue sound state management in the FCZ in the absence of conflicting federal regulatory provisions. See generally Committee on Commerce and National Ocean Policy Study, 94th Cong., 2nd Sess., A Legislative History of the Fishery

Conservation and Management Act of 1976
77, 259, 328, 459, 677, and 961 (hereinafter cited as "Legislative History"). While providing for exclusive federal fishery management with respect to foreign fishing activities, Congress expressly authorized continued state management jurisdiction and enforcement authority in the FCZ over vessels "registered under the laws" of the states. 16 U.S.C. § 1856(a).

Nothing in the MFCMA manifests Congressional intent to preempt all state fishery regulations in the FCZ. Indeed, it would be inconsistent with the MFCMA's purpose of conserving and managing fishery resources (expressed at 16 U.S.C. 1801(b)) to create an instant void in management of the king crab fishery as of the March 1, 1977 effective date of the Act.

At the time Congress enacted the MFCMA, many coastal states, like Alaska, had well established fishery management programs in the FCZ, designed to protect and conserve resources valuable to their economies. Legislative History

at 230, 234. Had Congress intended a drastic curtailment of the states' Skiriotes jurisdiction, it would have so indicated. Indeed, this is what the court in People v. Weeren, 607 P.2d 1279, 1286-87 (Cal. 1980), cert. denied, 449 U.S. 837 (1980), concluded. Congress has not acted to overturn California's assertion of jurisdiction in the FCZ, although it could have, had it found California's action to be inconsistent with the MFCMA.

The F/V Baranof has simply failed to raise any substantial basis for challenging the Alaska supreme court's conclusion that the MFCMA recognizes and authorizes continued state management prerogatives in the FCZ.

B. Exercise of State Jurisdiction Over Vessels Registered Under State Fishery Laws Is In Full Harmony With The MFCMA's Objectives And With This Court's Prior Decisions.

The MFCMA expressly allows state regulatory authority in the FCZ over vessels "registered under the laws" of the states. 16 U.S.C. § 1856(a). The

F/V Baranof was registered under the laws of Alaska pursuant to AS 16.05.475, which requires that any fishing vessel "employ[ed] ... in the water of Alaska" must be registered "under the laws of the state." Other pertinent Alaska statutes and regulations require, as a condition to delivery or landing of crab or engaging in commercial fishing in the state, that a vessel obtain a vessel license and a permanent number plate, and complete a tank inspection by state officials. AS 16.05.490(a); AS 16.05.520; 5 AAC 34.020; 5 AAC 34.030; and 5 AAC 39.120(a) and (b). The F/V Baranof held the appropriate state licenses, bore a state vessel license plate, and landed king crab in Alaska.

The F/V Baranof argues that "vessel registration," as used in the MFCMA, applies only to federal vessel documentation laws, not state fishing vessel registration provisions. The Alaska supreme court correctly rejected this interpretation as being contrary to the plain language and purposes of the MFCMA, and as illogical.

The California supreme court in People v. Weeren also rejected this argument, noting that the term "vessel registration" is a term of art only for foreign -- not domestic -- federal vessel documentation laws, and that it would be contrary to the purposes of the MFCMA to assume that Congress intended to preclude state regulation of vessels registered under state laws. Id. at 1286.

The Alaska and California decisions are in complete harmony with Skiriotes. Skiriotes recognized the legitimate interest states have in managing the fisheries off their coasts, and the Skiriotes Court's recognition of state authority to regulate state citizens' fishing activities beyond territorial seas is fully consistent with Alaska's exercise of jurisdiction, within the FCZ, over vessels registered under its laws.

Alaska has a recognized legitimate interest in king crab, which migrate freely across territorial boundaries, and

in its king crab fishery. 6/ Vessels that engage in the king crab fishery and that are subject to State vessel registration laws have a close nexus to Alaska. As the Alaska supreme court stated in State v. Bundrant, 546 P.2d 530, 556 n.106 (Alaska 1976), appeal dismissed sub nom., Uri v. Alaska, 429 U.S. 806 (1976):

Bering Sea crabbers daily make use of Alaskan territorial waters and facilities, and probably could not continue to crab in the area without using Alaskan shore based facilities.

Accord, F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130 (1981). Alaska regulations governing king crab apply even-handedly to all vessels registered under Alaska law regardless of home port, and Congress has created no laws conflicting with that

6/ This aspect of crab biology is discussed in State v. Bundrant, 546 P.2d 530, 551 (Alaska 1976).

exercise of jurisdiction. Moreover, the Secretary of Commerce has adopted no regulations governing the harvest of king crab.

C. The MFCMA Does Not Divest State Courts Of Jurisdiction Over Violations Of State Fishery Laws Committed By State Registered Vessels in the FCZ.

The MFCMA provides exclusive federal jurisdiction only over cases "arising under provisions of this chapter." 16 U.S.C. 1861(d). The definition of "provisions of this chapter" refers only to regulations issued by the federal government, federally issued permits, and international fishery agreements. 16 U.S.C. 1861(e). Obviously, Congress carefully allocated fisheries management between state and federal agencies, and fisheries jurisdiction between state and federal courts, in order to best serve the objectives of the MFCMA. Accordingly, the definition makes no mention of state statutes or regulations.

The charges against the F/V Baranof involve conservation laws adopted by the State, not by the federal government, and made under state management directives to conserve and manage state fisheries. AS 16.05.221(a); AS 16.05.251; Alaska Const. art. VIII, §§ 2, 4. These management provisions predated the MFCMA and are not a part of federal law or regulation. 16 U.S.C. 1861(d) jurisdiction is therefore not involved at all.

Moreover, the F/V Baranof's argument that the instant case arises under the MFCMA does not present a substantial challenge to the well established principle that cases "arise under" federal laws only if a federal right or immunity is in fact a substantial and essential element of the case, upon which the result of the action depends. Gully v. First National Bank, 299 U.S. 109, 112 (1936). It is the federal nature of an action, not its source, that determines subject matter jurisdiction. Franchise Tax Board v. Laborers Vacation Trust, 103

S. Ct. 2841 (1983). The instant case involves alleged violations of state law.

Finally, from a pragmatic perspective, denial of state court jurisdiction over cases such as that against the F/V Baranof would defeat the conservation and management purposes of the MFCMA by hampering or precluding enforcement. Typically, king crab fishing violations occur off the Alaska coast, hundreds of miles from the nearest federal court in Anchorage. State courts exist in Dutch Harbor, Dillingham, Unalaska, and elsewhere near the fishing grounds, and thus provide a more convenient forum for issuance of warrants, review of release requests, and trials. Defendants, enforcement personnel, and witnesses usually live closer to State courts than to the federal court in Alaska. Also, State courts have over the years developed a familiarity with, and expertise regarding, State fishery management laws and procedures, a fact Congress surely recognized in allowing states continued management under the MFCMA.

The federal agency charged with administration of the MFCMA, the National Oceanic and Atmospheric Administration ("NOAA"), recognizes the need for joint state and federal management, and the crippling effect that divestment of state court jurisdiction would have on the overall objectives of the MFCMA, and filed an amicus brief urging the Alaska supreme court to affirm state court jurisdiction.

D. States Have In Rem Forfeiture Jurisdiction Over Fishery Violations, And The Ship Mortgage Act Does Not Limit That Jurisdiction.

The F/V Baranof asks, in essence, for this Court to overrule C. J. Hendry Co. v. Moore, 318 U.S. 133 (1942), which recognized state jurisdiction over in rem forfeiture actions under the saving to suitor's clause, 28 U.S.C. 1333(1). The Hendry Court recognized the distinction between an in rem action brought by an individual to enforce a maritime lien, which action was not within the common law, and an in rem action

brought by a sovereign state to forfeit a vessel for fishing violations, which was a common law remedy and therefore cognizable in state courts under the saving to suitors clause. The F/V Baranof has presented no sound legal or policy reasons for overturning state *in rem* jurisdiction recognized in Hendry, or extraterritorial enforcement sanctioned in Skiriotes.

In addition, when Congress adopted the Ship Mortgage Act of 1920, 46 U.S.C. 911-984, it did not thereby divest state courts of their common law forfeiture jurisdiction. As the Alaska supreme court correctly noted, the Ship Mortgage Act was enacted to provide a forum for vessel lien foreclosure suits, which this Court had previously deemed to be outside admiralty jurisdiction. The Act was also intended to promote financing of ship construction and purchase, and to provide an exclusive federal forum for preferred ship lien prioritization for certain vessels. 46 U.S.C. 951; James Stewart & Co. v. Rivara, 274 U.S. 614 (1927); G. Gilmore

and C. Black, The Law of Admiralty, 691 (2nd ed. 1975).

An in rem forfeiture proceeding, in contrast, is not a mortgage or lien foreclosure action; it is an exercise of police power, well within the scope of valid state common law actions permissible under the saving to suitors clause. C. J. Hendry Co. v. Moore, 318 U.S. 133 (1942), (citing Smith v. Maryland, 59 U.S. (18 How.) 71 (1855)). A forfeiture proceeding does not prioritize liens; it simply forfeits the interest of owners and lienors. 7/

Moreover, a forfeiture proceeding does not extinguish a lienholder's

7/ The interests of "innocent" lienholders are protected under Alaska law by a remission requirement. State v. Rice, 626 P.2d 104 (Alaska 1981). However, this is not a basis for barring state court jurisdiction. To the extent that there could be parties who establish innocent owner status, and to the extent that their relative priorities are relevant, the state court can apply applicable federal lien law. Madruga v. Superior Court, 346 U.S. 556, 562 (1954).

rights under the Ship Mortgage Act of 1920. 46 U.S.C. 954(a) provides an in personam remedy, by which a lienholder could bring suit to recover the debt, even if his interests in the vessel are forfeited in a state action.

Thus, the F/V Baranof's portrayal of an "irreconcilable jurisdictional conflict" is a mirage. There are neither legal nor policy reasons for construing the Ship Mortgage Act of 1920 to mandate exclusive federal jurisdiction over state in rem forfeiture proceedings whenever a vessel is subject to a preferred ship mortgage. Such a ruling would effectively nullify most state enforcement actions against vessels that violate fisheries conservation laws.

4. There Is No Conflict In The Lower Court Decisions Necessitating This Court's Review.

With only one exception, all state and federal courts that have ruled on the MFCMA's effect on extraterritorial state fishery jurisdiction have agreed that the MFCMA does not divest state

courts of jurisdiction over violations committed by state registered vessels in the FCZ, and that the MFCMA does not preempt state fishery management in the FCZ absent a direct conflict in fishery management regulations. See Anderson Seafoods, Inc. v. Graham, 529 F.Supp. 512 (D. Fla. 1982) (upholding state enforcement in the FCZ of a state prohibition against use of purse seines); People v. Weeren, 607 P.2d 1279 (Cal. 1980), cert. denied, 449 U.S. 839 (1980) (affirming extraterritorial enforcement of California swordfish management regulations); State v. Southeastern Fisheries Association, 415 So.2d 1326 (Fla. Ct. App. 1982) (affirming extraterritorial enforcement of a Florida prohibition on traps for catching saltwater finfish); State v. Millington, 377 So.2d 685 (Fla. 1979) (upholding Florida landing law on minimum shrimp size); State v. Sterling, 448 A.2d 785 (R.I. 1982) (recognizing the authority of states to regulate fisheries in the FCZ, but finding a direct conflict

between Rhode Island's yellowtail flounder restrictions and provisions of a federal fishery management plan).

The only rulings to the contrary came from panels of the intermediate appellate court of Florida. See Livings v. Davis, 422 So.2d 364 (Fla. Ct. App. 1982) and Tingley v. Allen, 397 So.2d 1166 (Fla. Ct. App. 1981). The two panels enjoined, without analysis, extraterritorial enforcement of state shrimping provisions. The Livings case is now pending on appeal before the Florida supreme court. Moreover, these decisions have been expressly rejected by yet another panel of the same court, State v. Southeastern Fisheries Association, 415 So.2d 1326 (Fla. Ct. App. 1982), and by the Florida federal district court. Anderson Seafoods Inc. v. Graham, 529 F.Supp. 512 (D. Fla. 1982).

In short, all federal and virtually all state courts that have ruled on the effect of the MFCMA agree that it does not abrogate state fishery management in the FCZ.

Moreover, NOAA, the federal agency charged with implementation of the MFCMA, whose interpretation of that act is entitled to considerable weight, has taken the position that the MFCMA contemplates continued state management and enforcement jurisdiction. This position is evidenced in the Secretary of Commerce's amicus curiae participation in the instant case in the Alaska supreme court, and in Livings v. Davis, 422 So.2d 354 (Fla. Ct. App. 1982).

Thus, contrary to the F/V Baranof's argument, there is no major uncertainty in state-federal relations that this Court needs to clarify.

The F/V Baranof also argues that the Secretary of Commerce has improperly delegated authority to the State by virtue of his proposal to adopt regulations identical to State king crab management provisions. This issue was never raised or briefed below. It is not ripe for review because the federal government has not yet even published its draft regulations for public review. Moreover, since the proposed regulations

are identical to State conservation laws, their existence more logically supports the conclusion that the State's management program well serves the conservation and management objectives of the MFCMA.

CONCLUSION

The Alaska supreme court's decision is interlocutory and therefore certiorari should be denied. Moreover, the decision falls well within an established body of statutory and case law recognizing the states' legitimate interest in conserving and managing the fisheries off their coasts, and their authority to enforce conservation laws in the context of in rem forfeiture proceedings. The F/V Baranof has raised neither new nor substantial federal questions meriting this Court's review, and their petition should, accordingly, be denied.

DATED this 13th day of July,
1984.

Respectfully submitted,

NORMAN C. GORSUCH
ATTORNEY GENERAL OF THE
STATE OF ALASKA

By: *Sarah Elizabeth McCracken*
SARAH ELIZABETH MCCRACKEN
ASSISTANT ATTORNEY GENERAL
State of Alaska
Department of Law
Office of the Attorney General
1031 West 4th Ave., Suite 200
Anchorage, Alaska 99501

Counsel for State
Respondent

APPENDIX A

IN THE SUPERIOR COURT FOR THE
STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KODIAK

STATE OF ALASKA
Plaintiff,
vs.
F/V BARANOF, its
paraphernalia, gear, etc.
Respondent.

3KO Civil

COMPLAINT FOR FORFEITURE

NATURE OF ACTION

1. This is a civil action pursuant to AS 16.05.195 for the forfeiture of the F/V Baranof, its paraphernalia and gear.

PARTIES

2. Plaintiff is a sovereign state of the United States.

3. Defendant is a 170.1 foot steel hulled fishing vessel that was used for

catching, transporting, tendering and processing king crab in 1979 and 1980.

4. Defendant vessel is more particularly described as follows:

- a. gross tonnage - 907.57
- b. net tonnage - 797
- c. engine - 1175 horsepower
- d. construction - 1942

5. Defendant vessel has been assigned ADFG No. 34855.

6. Defendant vessel is registered under the laws of the State of Alaska and has been assigned USCG No. 598508.

7. The following persons have an ownership interest in the F/V Baranof.

1. Black Ink, Inc.
2. Exxon
3. Norman Randall
4. Jean Randall
5. Mrs. Richard (Judith) V. Pace
6. D. E. Gilman
7. Aaron Gilman
8. Terry Nierenberg
9. Richard C. White

8. John King was a skipper of the F/V Baranof while it was engaged in commercial fishing for king crab in October and November of 1979 and 1980.

9. Bart Campbell was a skipper of the F/V Baranof while it was engaged in commercial fishing for king crab in October and November of 1979 and 1980.

10. The Rainier National Bank holds a security interest in the F/V Baranof.

11. Defendant vessel was registered for the Bristol Bay registration area T on September 15, 1980.

12. Defendant vessel registration was changed to Pribilof Registration Area Q on October 21, 1980.

13. Defendant vessel was registered for the Southeastern District area, Statistical Area Q on September 15, 1979.

14. Defendant vessel registration was charged to the Pribilof District of Statistical Area Q on October 16, 1979.

15. On each of the above four dates, the vessel owner or agent entered into an Agreement for Use Privilege with the State of Alaska.

FACTS

16. Pursuant to 5 AAC 34.810 fishing for king crab in the Bristol Bay area (Statistical Area T) was opened on September 10, 1980.

17. Pursuant to Emergency Order 4-S-28-80 king crab fishing in the Bristol Bay Area (Statistical Area T) was closed on October 20, 1980.

18. Pursuant to 5 AAC 34.910, fishing for king crab in the Southeastern District of the Bering Sea area (Statistical Area Q) was opened on September 15, 1979.

19. Pursuant to Emergency Order 4-S-25-79 king crab fishing in the Southeastern District of the Bering Sea Area (Statistical Area Q) was closed on October 14, 1979.

20. The F/V Baranof is a vessel used for the taking, delivering or landing of fish within the jurisdiction of the State of Alaska.

FIRST CAUSE OF ACTION

21. Paragraphs 1 through 20 above are incorporated herein.

22. On or about October 22 -23, 1980 the F/V Baranof was used in or in aid of possessing and transporting king crab taken in high seas areas in violation of regulations of the Alaska Board of Fisheries.

23. On or about October 22 - 23, 1980 the F/V Baranof was used in or in aid of possessing king crab knowing that they were taken in violation of regulations of the Board of Fisheries or the Commissioner of Fish and Game. AS 16.10.210; 5 AAC 39.197.

24. The F/V Baranof was used in or in aid of violations of AS 16.05.920(a) on or about October 22 - 23, 1980.

25. On or about October 22 - 23, 1980 the F/V Baranof was used in or in aid of taking or possessing king crab in the Bristol Bay (Statistical Area T) after the area had been closed to king crab fishing. 5 AAC 34.810(b)

26. On or about October 22 - 23, 1980 the F/V Baranof was used in or in aid of possessing unprocessed king crab aboard a vessel licensed for commercial fishing within the Bristol Bay area when

the season was closed and the vessel was not validly registered for the area. 5 AAC 34.090.

27. On or about October 22 - 23, 1980 F/V Baranof was used in or in aid of engaging in fishing for king crab in a statistical area for which the vessel was not registered. 5 AAC 34.085(a)(1).

28. On or about October 22 - 23, 1980 the F/V Baranof was used in or in aid of engaging in fishing for king crab when the season has been closed. 5 AAC 34.085(a)(3); E.O. No. 4-S-28-80.

29. On or about October 22 - 23, 1980 the F/V Baranof was used in or in aid of engaging in fishing in statistical area in violation of regulations governing king crab fishing. 5 AAC 34.085(a)(4).

30. On or about October 22 - 23, 1980, the F/V Baranof was used in or in aid of failing to furnish data to the Alaska Department of Fish and Game necessary for reports required by the department. 5 AAC 39.130(e).

SECOND CAUSE OF ACTION

31. Paragraphs 1 through 20 above are incorporated herein.

32. On or about October 25, 1980 the F/V Baranof was used in or in aid of possessing and transporting king crab taken in high seas areas in violation of regulations of the Alaska Board of Fisheries.

33. On or about October 25, 1980 the F/V Baranof was used in or in aid of possessing king crab knowing that they were taken in violation of regulations of the Board of Fisheries or the Commissioner of Fish and Game. AS 16.10.210; 5 AAC 39.197.

34. The F/V Baranof was used in or in aid of violations of AS 16.05.920(a) on or about October 25, 1980.

35. On or about October 25, 1980 the F/V Baranof was used in or in aid of taking or possessing king crab in the Bristol Bay (Statistical Area T) after the area had been closed to king crab fishing. 5 AAC 34.810(b).

36. On or about October 25, 1980 the F/V Baranof was used in or in aid of

possessing unprocessed king crab aboard a vessel licensed for commercial fishing within the Bristol Bay area when the season was closed and the vessel was not validly registered for the area. 5 AAC 34.090.

37. On or about October 25, 1980 the F/V Baranof was used in or in aid of engaging in fishing for king crab in a statistical area for which the vessel was not registered. 5 AAC 34.085(a)(1).

38. On or about October 25, 1980 the F/V Baranof was used in or in aid of engaging in fishing for king crab when the season has been closed. 5 AAC 34.085(a)(3); E.O. No. 4-S-28-80.

39. On or about October 25, 1980 the F/V Baranof was used in or in aid of engaging in fishing in statistical area in violation of regulations governing king crab fishing. 5 AAC 34.085(a)(4).

40. On or about October 25, 1980 the F/V Baranof was used in or in aid of failing to furnish data to the Alaska Department of Fish and Game necessary for reports required by the department. 5 AAC 39.130(e).

THIRD CAUSE OF ACTION

41. Paragraphs 1 through 20 above are incorporated herein.

42. On or about November 18 - 19, 1980 the F/V Baranof was used in or in aid of possessing and transporting king crab taken in high seas areas in violation of regulations of the Alaska Board of Fisheries.

43. On or about November 18 - 19, 1980 the F/V Baranof was used in or in aid of possessing king crab knowing that they were taken in violation of regulations of the Board of Fisheries or the Commissioner of Fish and Game. AS 16.10.210; 5 AAC 39.197.

44. The F/V Baranof was used in or in aid of violations of AS 16.05.920(a) on or about November 18 - 19, 1980.

45. On or about November 18 - 19, 1980 the F/V Baranof was used in or in aid of taking or possessing king crab in the Bristol Bay (Statistical Area T) after the area had been closed to king crab fishing. 5 AAC 34.810(b).

46. On or about November 18 - 19, 1980 the F/V Baranof was used in or in

aid of possessing unprocessed king crab aboard a vessel licensed for commercial fishing within the Bristol Bay area when the season was closed and the vessel was not validly registered for the area. 5 ACC 34.090.

47. On or about November 18 - 19, 1980 the F/V Baranof was used in or in aid of engaging in fishing for king crab in a statistical area for which the vessel was not registered. 5 AAC 34.085(a)(1).

48. On or about November 18 - 19, 1980 the F/V Baranof was used in or in aid of engaging in fishing for king crab when the season has been closed. 5 AAC 34.085(a)(3); E.O. No. 4-S-28-80.

49. On or about November 18 - 19, 1980 the F/V Baranof, was used in or in aid of engaging in fishing in statistical area in violation of regulations governing king crab fishing. 5 AAC 34.085(a)(4).

50. On or about November 18 - 19, 1980 the F/V Baranof was used in or in aid of failing to furnish data to the Alaska Department of Fish and Game

necessary for reports required by the department. 5 AAC 39.130(e).

FOURTH CAUSE OF ACTION

51. Paragraphs 1 through 20 above are incorporated herein.

52. On or about November 21 - 22, 1980 the F/V Baranof was used in or in aid of possessing and transporting king crab taken in high seas areas in violation of regulations of the Alaska Board of Fisheries.

53. On or about November 21 - 22, 1980 the F/V Baranof was used in or in aid of possessing king crab knowing that they were taken in violation of regulations of the Board of Fisheries or the Commissioner of Fish and Game. AS 16.10.210; 5 AAC 39.197.

54. The F/V Baranof was used in or in aid of violations of AS 16.05.920(a) on or about November 21 - 11, 1980.

55. On or about November 21 - 22, 1980 the F/V Baranof was used in or in aid of taking or possessing king crab in the Bristol Bay (Statistical Area T) after the area had been closed to king crab fishing. 5 AAC 34.810(b).

56. On or about November 21 - 22, 1980 the F/V Baranof was used in or in aid of possessing unprocessed king crab aboard a vessel licensed for commercial fishing within the Bristol Bay area when the season was closed and the vessel was not validly registered for the area. 5 AAC 34.090.

57. On or about November 21 - 22, 1980 was used in or in aid of engaging in fishing for king crab in a statistical area for which the vessel was not registered. 5 AAC 34.085(a)(1).

58. On or about November 21 - 22, 1980 the F/V Baranof was used in or in aid of engaging in fishing for king crab when the season has been closed. 5 AAC 34.085(a)(3); E.O. No. 4-S-28-80.

59. On or about November 21 - 22, 1980 the F/V Baranof was used in or in aid of engaging in fishing in statistical area in violation of regulations governing king crab fishing. 5 AAC 34.085(a)(4).

60. On or about November 21 - 22, 1980 the F/V Baranof was used in or in aid of failing to furnish data to the

Alaska Department of Fish and Game necessary for reports required by the department. 5 AAC 39.130(e).

FIFTH CAUSE OF ACTION

61. Paragraphs 1 through 20 above are incorporated herein.

62. On or about October 1979, the F/V Baranof was used in or in aid of possessing and transporting king crab taken in high seas areas in violation of regulations of the Alaska Board of Fisheries.

63. On or about October 1979, the F/V Baranof was used in or in aid of possessing king crab knowing that they were taken in violation of regulations of the Board of Fisheries or the Commissioner of Fish and Game. AS 16.10.210; 5 AAC 39.197.

64. The F/V Baranof was used in or in aid of violations of AS 16.05.920(a) on or about October 1979.

65. On or about October, 1979, the F/V Baranof was used in or in aid of taking or possessing king crab in the Bristol Bay (Statistical Area T) after

the area had been closed to king crab fishing. 5 AAC 34.810(b).

66. On or about October 1979, the F/V Baranof was used in or in aid of possessing unprocessed king crab aboard a vessel licensed for commercial fishing within the Bristol Bay area when the season was closed and the vessel was not validly registered for the area. 5 AAC 34.090.

67. On or about October 1979, the F/V Baranof was used in or in aid of engaging in fishing for king crab in a statistical area for which the vessel was not registered. 5 AAC 34.085(a)(1).

68. On or about October 1979, the F/V Baranof was used in or in aid of engaging in fishing for king crab when the season has been closed. 5 AAC 34.085(a)(3); E.O. 4-S-28-80.

69. On or about October 1979, the F/V Baranof was used in or in aid of engaging in fishing in statistical area in violation of regulations governing king crab fishing. 5 AAC 34.085(a)(4).

70. On or about October 1979, the F/V Baranof was used in or in aid of

failing to furnish data to the Alaska Department of Fish and Game necessary for reports required by the department. 5 AAC 39.130(e).

SIXTH CAUSE OF ACTION

71. Paragraphs 1 through 20 above are incorporated herein.

72. On or about November 1979, the F/V Baranof was used in or in aid of possessing and transporting king crab taken in high seas areas in violation of regulations of the Alaska Board of Fisheries.

73. On or about November 1979, the F/V Baranof was used in or in aid of possessing king crab knowing that they were taken in violation of regulations of the Board of Fisheries or the Commissioner of Fish and Game. AS 16.10.210; 5 AAC 39.197.

74. The F/V Baranof was used in or in aid of violations of AS 16.05.920(a) on or about November 1979.

75. On or about November 1979, the F/V Baranof was used in or in aid of taking or possessing king crab in the Bristol Bay (Statistical Area T) after

the area had been closed to king crab fishing. 5 AAC 34.810(b).

76. On or about November 1979, the F/V Baranof was used in or in aid of possessing unprocessed king crab aboard a vessel licensed for commercial fishing within the Bristol Bay area when the season was closed and the vessel was not validly registered for the area. 5 AAC 34.090.

77. On or about November 1979, the F/V Baranof was used in or in aid of engaging in fishing for king crab in a statistical area for which the vessel was not registered. 5 AAC 34.085(a)(1).

78. On or about November 1979, the F/V Baranof was used in or in aid of engaging in fishing for king crab when the season has [sic] been closed. 5 AAC 34.085(a)(3); E.O. No. 4-S-28-80.

79. On or about November 1979, the F/V Baranof was used in or in aid of engaging in fishing in statistical area in violation of regulations governing king crab fishing. 5 AAC 34.085(a)(4).

80. On or about November 1979, the F/V Baranof was used in or in aid of

failing to furnish data to the Alaska Department of Fish and Game necessary for reports required by the department. 5 AAC 39.130(e).

WHEREFORE, plaintiff prays to this court:

1. That the defendant F/V Baranof, its paraphernalia and gear be forfeited to the State of Alaska, pursuant to AS 16.05.195.

2. That the State of Alaska be awarded attorneys' fees and costs including expenses for maintenance and storage of the defendant items.

3. For such further relief as the court may deem proper and just.

DATED at Anchorage, Alaska this 11 day of May, 1980.

WILSON L. CONDON
ATTORNEY GENERAL

By: S/

John G. Gissberg
Assistant Attorney General

IN THE SUPERIOR COURT FOR THE
STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KODIAK

STATE OF ALASKA
Plaintiff,
vs.
F/V BARANOF, its
paraphernalia, gear, etc.
Respondent.

3KO Civil

AFFIDAVIT OF ROBERT BOUTANG

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

Robert Boutang, first duly
sworn, deposes and says:

I am an investigator with the Fish and Wildlife Protection Division, Department of Public Safety, and am stationed in Anchorage, Alaska. I was responsible for the investigation of the violations of Alaska's king crab fishing laws and regulations committed through

the use of the F/V Baranof, its paraphernalia and gear; I have read the complaint for forfeiture in the above captioned case and know the factual contents thereof, the allegations contained therein are true to the best of my knowledge.

DATED at Anchorage, Alaska,
this 11 day of May, 1981.

S/ Robert Boutang

SUBSCRIBED AND SWORN TO before me
this 11 day of May, 1981.

S/ Notary Public in and for Alaska
My Commission expires: _____

APPENDIX B

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
P. O. Box 103136
Anchorage, Alaska 99510
(907)-274-4563
FTS 271-4064

James O. Campbell, Chairman
Jim H. Branson, Executive Director

605 West 4th Avenue
Anchorage, Alaska 99510

TENTATIVE SCHEDULE

For Review, Approval, and Implementation of the BS/AI King Crab FMP

July 16, 1984	Day of receipt
Aug. 3, 1984	F clears and forwards regulatory package to A, Day 19.
Aug. 13, 1984	DOC clears publication of proposed regs and provides docket number to F/M12, Day 29.
Aug. 14, 1984	F/M12 files proposed regs with OFR, Day 30.

Aug. 24, 1984

F/M11 sends Washington office comments on FMP, FEIS, RIR/IRFA to PD, Day 40.

Sept. 3, 1984

RD transmits draft decision memo to F/M11, Day 50. F/M1 and GCF hold decision meeting (conference call with Region), Day 60.

Sept. 18, 1984

End of public comment period, Day 75.

Sept. 25, 1984

RD approves/partially disapproves FMP, transmits decision memo to F/M11, Day 82.

Oct. 2, 1984

F approves package: forwards package to A, Day 89.

Oct. 22, 1984

OMB clears final regs and notifies DOC; DOC notified F/M12 and provides docket number, Day 109.

Oct. 23, 1984

F/M12 files final
regs with FR, Day
110.

Oct. 29, 1984

Federal
Register publishes
final regs, Day 115.

Nov. 27, 1984

End of APA delayed
effectiveness period,
regs effective.

APPENDIX C

Federal Statutes

16 U.S.C. 1801(b):

(b) Purposes

It is therefore declared to be the purposes of the Congress in this chapter

--

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development.

16 U.S.C. 1856(a):

(a) In general

Except as provided in subsection (b) of this section, nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. For purposes of this chapter, except as provided in subsection (b) of this section, the jurisdiction and authority of a State shall extend (1) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

16 U.S.C. 1861(d):

(d) Jurisdiction of district courts

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter Any such court may, at any time --

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

16 U.S.C. 1861(e):

(e) Definitions

For purposes of this section --

(1) The term "provisions of this chapter" includes (A) any regulation or permit issued pursuant to this chapter, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 1821(b) or (c) of this title, with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term "violation of any provision of this chapter" includes (A) the commission of any act prohibited by section 1857 of this title, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

28 U.S.C. 1257(3):

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

• • •

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

28 U.S.C. 1333(1):

§ 1333. Admiralty, maritime and prize cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

46 U.S.C. 951:

§ 951. Lien of preferred mortgage; foreclosure; jurisdiction; procedure; foreign ship mortgages

A preferred mortgage shall constitute a lien upon the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by such vessel. Upon the default of any term or condition of the mortgage, such lien may be enforced by the mortgagee by suit in rem in admiralty. Original jurisdiction of all such suits is granted to the district courts of the United States exclusively. In addition to any notice by publication, actual notice of the commencement of any such suit shall be given by the libellant, in such manner as the court shall direct, to (1) the master, other ranking officer, or caretaker of the vessel, and (2) any person who has recorded a notice of claim of an undischarged lien upon the vessel, as provided in section 925 of this title, unless after search by the libellant satisfactory to the court, such mortgagor, master, other ranking officer, caretaker, or claimant is not found with-

in the United States. Failure to give notice to any such person, as required by this section, shall not constitute a jurisdictional defect; but the libellant shall be liable to such person for damages in the amount of his interest in the vessel terminated by the suit. Suit in personam for the recovery of such damages may be brought in accordance with the provisions of subsection (c) of section 941 of this title.

Foreign ship mortgages: As used in sections 951 to 954 of this title, the term "preferred mortgage" shall include, in addition to a preferred mortgage made pursuant to the provisions of this chapter, any mortgage, hypothecation, or similar charge created as security upon any documented foreign vessel (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel, of less than two hundred gross tons) if such mortgage, hypothecation, or similar charge has been duly and validly executed in accordance with the laws of the foreign nation under the laws of which the vessel is documented and has been duly registered in accordance with such laws in a public register either at the port of registry of the vessel or at a central office; and the term "preferred mortgage lien" shall also include the lien of such mortgage, hypothecation, or similar charge: Provided, however, That

such "preferred mortgage lien" in the case of a foreign vessel shall also be subordinate to maritime liens for repairs, supplies, towage, use of drydock or marine railway, or other necessaries, performed or supplied in the United States.

46 U.S.C. 954(a):

§ 954. Suits in personam in admiralty on default

(a) Upon the default of any term or condition of a preferred mortgage upon a vessel, the mortgagee may, in addition to all other remedies granted by this chapter, bring suit in personam in admiralty in a district court of the United States, against the mortgagor for the amount of the outstanding mortgage indebtedness secured by such vessel or any deficiency in the full payment thereof.

APPENDIX D

Alaska Statutes, Regulations, and Constitutional Provisions

AS 16.05.221(a):

Sec. 16.05.221. Boards of Fisheries and Game. (a) For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

AS 16.05.251:

Sec. 16.05.251. Regulations of the Board of Fisheries. (a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas and bag limits on the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;

(7) engaging in biological research, watershed and habitat improvement, fish management, protection, propagation and stocking;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures

considered necessary to the resources of the state;

(9) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote fish research, management, education and information and to train persons for fish management;

(10) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(11) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(12) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that

adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

AS 16.05.475:

Sec. 16.05.475. Registration of fishing vessels. (a) A person may not employ a fishing vessel in the water of Alaska unless it is registered under the laws of the state. Vessels registered under the laws of another state, and persons residing in another state, are not excused from this provision.

(b) The term "employ," as used in this section, shall be defined by the Board of Fisheries through the adoption of regulations under the Administrative Procedure Act (AS 44.62). The definition may include any activities involving the use or navigation of fishing vessels.

(c) The term "registered under the laws of the state," as used in this section, shall be defined by the Board of Fisheries through the adoption of regulations under the Administrative Procedure Act (AS 44.62). The definition may include any existing requirements regarding registration, licenses, permits, and similar matters imposed by law or regulation together with modifications of them and with any additional requirements the board finds necessary to maximize the authority of the state to apply and enforce fisheries regulations under the Fishery Conservation and Management Act of 1976 (P.L. 94-265, 90 Stat. 331, 16 U.S.C. 1801 et seq.).

(d) The term "fishing vessel," as used in this section, means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(1) fishing, or

(2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

AS 16.05.490(a):

Sec. 16.05.490. Vessel license. (a) As a condition to delivery or landing of fish or engaging in commercial fishing in the state, a license is required for a commercial vessel, including a vessel used in charter service for the recreational taking of fish and shellfish.

AS 16.05.520:

Sec. 16.05.520. Number Plate. (a) The vessel license includes a permanent number plate. The number plate shall be accompanied by a tab affixed to it designating the year to be fished. A number plate is not transferable, and it shall be considered a permanent fixture upon the vessel upon which it is originally placed. It shall be securely fastened well forward on the port side in plain sight. On a vessel with a superstructure the plate shall be

fastened on the port side of the superstructure. A number plate remains the property of the state. If a permanent number plate is accidentally defaced, mutilated, destroyed, or lost, the person owning or operating the vessel shall immediately apply for and may obtain a duplicate upon furnishing the Commercial Fisheries Entry Commission with the pertinent facts and a payment of \$2.

5 AAC 34.020:

5 AAC 34.020. Registration. (a) Registration areas are designated as follows:

(1) superexclusive: areas E, H, and M;

(2) exclusive: areas A, K, O, and T;

(3) nonexclusive: areas R and Q.

(b) A vessel or gear registered for a superexclusive registration area may not be used to take king crab in any other registration area during that registration year. A vessel or gear registered for an exclusive registration area may not be used to take king crab in any superexclusive registration area or any other exclusive registration area

during that registration year. A vessel or gear registered for one or both of the nonexclusive registration areas may also be registered for one exclusive registration area, but may not be used to take king crab in more than one exclusive registration area or in any superexclusive registration area during that registration year.

(c) The owner or his authorized agent shall register all king crab fishing gear and each king crab fishing vessel for a registration area before operating in that area, except that king crab vessels must be registered for registration area H before the scheduled season opening date.

(d) The registration year shall be June 28 through June 27.

(e) A registration is not valid until the vessel has been inspected as required in 5 AAC 34.030(a) or (b). Once a registered vessel has been inspected for a superexclusive or exclusive registration area, its registration may not be voided to take king crab in another superexclusive or exclusive registration area. A registration may be voided to take other species of crab in other king crab registration areas.

(f) The late registration of a king crab fishing vessel may be permitted by the commissioner in the case of the loss of a registered king crab fishing vessel by sinking or destruction. The late registration may only be for the area in which the lost vessel was registered. For purposes of this subsection, loss of a vessel is considered to mean such vessel is incapable of being used to take king crab during the open king crab season in the area for which it is registered. Loss of a vessel must be documented by submission of proof, in writing, that the vessel is sunk or destroyed. The replacement vessel may not be one which has been used to take king crab in another exclusive registration area during the current registration year.

(g) Repealed 6/30/79.

(h) A vessel validly registered to take king crab in a king crab registration area may not take any species of crab in any other king crab registration area. No vessel may be validly registered for more than one king crab registration area at a time.

(i) A valid registration for any registration area is invalid 24 hours after the closure of the season for the registration area.

(j) Notwithstanding (b) of this section, a vessel registered for statistical area M may be used to take king crab in the Semidi Islands district of statistical area K as described in 5 AAC 34.405(d).

5 AAC 34.030:

5 AAC 34.030. Landing and Inspection Requirements. (a) Except as required in (b) of this section, within 24 hours before a season opening or at any time during the open season before taking king crab, any vessel registered for an exclusive registration area must have its holds or live tanks inspected by a local representative of the department at inspect points specified in 5 AAC 34. No king crab may be on board at the time of inspection. Successful completion of the inspection validates the registration for the area. During the period 24 hours before the season opening in an exclusive registration area until the season closure in the area, the inspection requirements of this subsection do not apply to any registered king crab vessel which does not have any saltwater circulation system in its holds or live tanks.

(b) Registered king crab vessels must have their holds, live tanks, and

freezers inspected by a local representative of the department at inspection points specified in 5 AAC 34 within the following periods and areas: starting 116 hours after the opening of statistical areas T, M, O, and the Pribilof district of statistical area Q, and within 48 hours before taking or processing king crab in statistical areas R and Q. No king crab may be on board at the time of inspection. Successful completion of the inspection validates the registration for the area.

(c) Except as provided in (d) of this section, all vessels must land all king crab in the area for which they are validly registered at the time.

(d) A vessel validly registered for an area which desires to land king crab in another registration area must contact by radio a local representative of the department prior to leaving the statistical area encompassing the area for which the vessel is registered, and shall submit to such inspection at such location as the representative may require. The representative contacted by the vessel must be located in the registration area for which the vessel is validly registered at the time. A vessel acting pursuant to this authorization shall at the time of landing its catch have no greater amount of king crab on

board than were present at the time of any inspection.

(e) A vessel making radio contact pursuant to (d) of this section shall state to the local representative of the department the amount of king crab on board at the time.

(f) When a vessel lands king crab pursuant to the authorization in (d) of this section, the registration under which the vessel is operating becomes invalid. In order to again become validly registered for an area, the vessel must comply with (a) or (b) of this section.

(g) For purposes of this section, a vessel validly registered for the registration area in statistical areas Q and T landing king crab at Dutch Harbor, Akutan or King Cove will be deemed to have landed their catch in the area for which they are validly registered at the time.

(h) For purposes of (d) of this section, operators of vessels registered for the registration area in statistical areas Q and T shall make the required radio contact at Dutch Harbor.

(i) The commissioner may suspend any or all of the requirements of (d), (e)

and (f) of this section for particular registration areas if he finds that to do so would be in the public interest.

(j) Repealed 6/14/80.

(k) Repealed 6/30/79.

5 AAC 39.120(a):

5 AAC 39.120. Registration of Commercial Fishing Vessels. (a) A person who owns a commercial fishing vessel or his authorized agent shall register that vessel by completing a vessel license application or renewal form and submitting it to the Commercial Fisheries Entry Commission. Vessel registration is required before fishing or transporting fish in any waters of Alaska.

(1) A vessel, if it is in compliance with all regulations governing registration and if it displays a license issued under AS 16.05.530, is considered to be registered under the laws of the state and may be employed in the taking or transporting of fish;

(2) In this section

(A) "employ" or "employed" means taking or attempting to take fish, or transporting fish which have been taken

or any operation of a vessel aiding or assisting in the taking or transporting of fish;

(B) "in compliance with all regulations governing registration" includes vessel registration required by 5 AAC 31.020, 5 AAC 31.070, 5 AAC 32.020, 5 AAC 32.070, 5 AAC 34.020, 5 AAC 34.070, 5 AAC 35.020, 5 AAC 35.070, 5 AAC 38.020 and 5 AAC 38.070, and includes district or subdistrict registration requirements of 5 AAC 03 - 5 AAC 38, and includes the provisions of this section;

(C) "registered under the laws of the state" means that a vessel displays a license described in 20 AAC 05.958 and issued under AS 16.05.530, and that the registration provisions of 5 AAC 03 - 5 AAC 39 have been complied with and evidence of compliance is immediately available at all times during fishing or transporting operations, and can be shown upon request to any authorized representative of the department;

(3) It is unlawful to take, attempt to take or possess unprocessed fish aboard a vessel in the waters of Alaska unless the vessel is registered under the laws of the state.

5 AAC 39.120(b):

(b) Area registration requirements for shellfish vessels are as specified in the registration regulations in 5 AAC 31 - 5 AAC 38.

Alaska Const. art VIII, § 2:

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Alaska Const. art. VIII, § 4:

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.